

FILED

08 SEP -5 AM 10:52

RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Samuel A. Dubyak, D-54700
Box 689 C-115L
California State Prison
Soledad, CA 93960-0689

Petitioner, in pro per

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SAMUEL A. DUBYAK

Case No. C 08-0667 JSW

Petitioner,

VS.

PETITIONER'S REPLY TO RESPONDENTS
MOTION TO DISMISS, AND, MOTION TO
WITHDRAW THE INSTANT PETITION TO
RETURN TO THE STATE SUPREME COURT
TO EXHAUST VIA HABEAS CORPUS
WITH UPDATED CASE CITATIONS.

BEN CURRY, Warden,

Respondent.

In response to the Respondents motion that Petitioner has not exhausted his State Supreme Court remedies, however futile it would have or will be, Petitioner concedes and files this instant motion to return to the State Supreme Court via a habeas corpus petition for exhaustion purposes, without prejudice.

It is understood by Petitioner that he only has to present the habeas corpus petition to the State Supreme Court and that there is no obligation on his part to plead with that court to at a minimum, actually read the petition prior to their post card denial. Presentation of the habeas petition to the Supreme Court thus receipt of a post card denial, should be sufficient under the doctrine of "fair opportunity", which should also satisfy Williams v. Craven, 460 F.2d 1253, 1254 (9th Cir. 1972); Picard v. Connor, 404 U.S. 270, 275 (1971); Anderson v. Harless, 459 U.S. 4, 6 (1982).

Petitioner additionally will now have the opportunity to apply the legal principles dictated in In re Lawrence, Cal.4th _____, pages 1-39, and,

1 In re Shaputis, Supreme Court case No. S155872, pages 1-25, applicable to
2 Petitioner's issues.

3 Assuming the standard of the State Supreme Court to not even address the
4 issues that will be presented in his habeas corpus petition (not a petition for
5 review), Petitioner will only lose a few more months of his life in place of
6 arguing, incorrectly, that he exhausted the current petition before this Court.

7 Petitioner is assisting 15 inmates with habeas petitions directed against
8 the Board of Prison Terms and had previously made the same error in MARROQUIN
9 v. BEN CURRY, that petition was amended and an order to show cause was issued.

10 Petitioner does apologize for these errors, placing extra workload upon
11 the courts, but, Petitioner is basically blind in one eye and has recently
12 undergone Prostate surgery and requiring other surgeries which helped create
13 errors under stress, i.e., asking for a petition for review in the State Supreme
14 Court in place of filing a habeas petition, said errors will not happen again.

15 Petitioner would like to remind this Court that his 2003 Board unsuitability
16 decision (5 years ago) has been before this Court since January 31, 2006 (ORIGINAL
17 FILED STAMPED DATE), and, this petition was fully exhausted at the state supreme
18 court level, answered by the attorney general and traversed by Petitioner, Case
19 No. C 06-0707 JSW (PR).

20 Is Petitioner required to pay the \$5.00 filing fee again when he returns
21 to this Court? As our illustrious Governor said in the movies "I'll be back".

22 DECLARATION

23 I declare under penalty of perjury that the foregoing is true and correct.
24 Executed this 1st day of September, 2008 at Soledad, California.

25
26 

27 Samuel A. Dubyak
28

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare that;

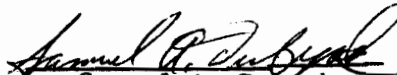
I am over 18 years of age, and, that I am the pro per Petitioner to the within cause of action; my complete mailing address is: Samuel A. Dubyak, D-54700 Box 689 C-115L, California State Prison, Soledad, CA 93960-0689. That I served a true and correct copy, original to the court, of the attached documents, addressed to the interested parties, by placing them in an envelope with postage fully prepaid and placing said envelopes in the prison U.S. Mail Box. (Mail box rule applicable).

OFFICE OF THE CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
455 GOLDEN GATE AVENUE, Suite 11000
SAN FRANCISCO, CA 94102-7004

DECLARATION

I declare under penalty of perjury that the foregoing is true and correct, executed this 1st day of September, 2008 at Soledad, California.


Samuel A. Dubyak

